

5/25/81

SUBJECT: Sunset for Board of Hearing Aid Examiners

COMMITTEE: Government Organization: committee substitute recommended

VOTE: 8 ayes--Collazo, G. Thompson, Cary, Gonzales, Hinojosa, Keese,  
Staniswalis, Tow

0 nays

1 present, not voting--Evans

2 absent--Bomer, Henderson

WITNESSES: For--Ollie Livingston and Roy Brakebill, representing  
themselves; Dick Durbin, Texas Hearing Aid Association;  
Dr. Patricia Cole, Texas Speech and Hearing Association.

Against--None

SENATE  
VOTE: 29 ayes, 0 nays

BACKGROUND: Since 1969, persons who fit and sell hearing aids have been  
regulated by the Texas Board of Examiners in the Fitting  
and Dispensing of Hearing Aids. There are 418 board  
licensees in the state. The board takes in about \$50,000  
a year in license fees, which goes into the General Revenue  
Fund. Under the Texas Sunset Act, the board will cease  
to exist this year unless recreated by the Legislature.

DIGEST: The bill would recreate the board, altering its composition,  
members' terms, and procedures. A second public-interest  
member would be added to the nine-member board. Conflict-of-  
interest restrictions on board members are spelled out.  
All members would serve six-year terms, which would be  
staggered. (Now, one-third of the members serve two-year  
terms, one-third serve four years and one-third serve  
six years.) Board meetings would be placed under the Open  
Meetings Act, and certain notice provisions that are  
inconsistent with that act would be stricken. The Legis-  
lature would be authorized to set board members' per diem  
pay.

Consumer-related features of the bill include directions to  
the board to establish guidelines for a 30-day trial period  
for hearing-aid users. The board would be directed to  
distribute general consumer information and to require  
consumer information to be printed on hearing-aid contracts.  
Hearing-aid dispensers would be required to prominently  
display the board's consumer-complaint address and phone  
number. The board would be directed to establish a file  
of consumer complaints against licensees.

The bill would set new licensing fees, modify the grounds  
for refusal to license and for disciplinary action, and  
provide for hearings in disciplinary proceedings. The  
bill specifies that persons seeking licensing who fail

DIGEST  
(cont.):

the test need re-take only those portions of the test they failed. Guidelines for testing and calibration of testing equipment are established. Also detailed in the bill are minimal standards to be used by licensees in evaluating a candidate for hearing-aid use.

Administrative changes include a requirement that the board president develop an intra-agency career ladder program and an annual performance evaluation program.

The board is specifically restrained from restricting certain types of advertising by licensees, though it may prohibit false, misleading, or deceptive ads.

SUPPORTERS  
SAY:

Forty-four states license hearing-aid dispensers and four others regulate hearing-aid sales. Regulation in Texas should be continued and should be left in the hands of the board, which has served its purpose well.

The bill tracks the recommendations of the Sunset Commission and makes many beneficial changes in board procedures. It adds solid consumer-protection features to the law. The 30-day trial period guidelines will be of critical importance to hearing-aid users, who often need several weeks to know if an aid is suitable for them. Requirements for consumer information and complaints also will help discipline or eliminate unscrupulous or incompetent practitioners. The addition of another general-public member to the board is yet another consumer benefit. Licensees would gain from this bill also, since it spells out carefully what is required of them, entitles them to disciplinary hearings, and firms up details of the testing and licensing process.

The restriction on the board regulation of advertising is in conformity with Supreme Court decisions on various agency policies that constituted a restraint of trade.

OPPONENTS  
SAY:

The requirement that the board establish guidelines for a 30-day trial period, while not as bad as the mandatory 30-day pre-sale trial originally recommended by the Sunset Commission, will hurt consumers. Returned units cannot be marketed as new and so trial periods will drive up prices for consumers. Some hearing-aid dispensers already offer such trial periods, anyway.

NOTES:

As originally drafted, the bill would have put audiologists under the licensing provision. The bill now exempts those audiologists who only test hearing, and do not sell hearing aids.